

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Comcast Cable Communications, LLC	)	CSR 7158-E, 7666-E
	)	
Petition for Determination of Effective	)	
Competition in various Illinois Communities	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: May 28, 2008**

**Released: May 29, 2008**

By the Senior Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION AND BACKGROUND**

1. Comcast Cable Communications, LLC, hereinafter referred to as “Petitioner,” has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2), 76.905(b)(1) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioner alleges that its cable system serving the communities listed on Attachment B and hereinafter referred to as Group B Communities is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”)<sup>1</sup> and the Commission’s implementing rules,<sup>2</sup> and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”) and Dish Network (“Dish”).<sup>3</sup> Petitioner additionally claims to be exempt from cable rate regulation in the Communities listed on Attachment C and hereinafter referred to as Group C Communities because the Petitioner serves fewer than 30 percent of the households in the franchise area. The petitions are unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>4</sup> as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.<sup>5</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>6</sup> For the reasons set forth below, we grant the petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

<sup>1</sup>See 47 U.S.C. § 543(a)(1).

<sup>2</sup>47 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(1).

<sup>3</sup>Comcast additionally relies on the subscriber count of cable operator Wide Open West (“WOW”) in the Calumet City Community.

<sup>4</sup>47 C.F.R. § 76.906.

<sup>5</sup>See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

<sup>6</sup>See 47 C.F.R. §§ 76.906 & 907.

## II. DISCUSSION

### A. The Competing Provider Test

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area;<sup>7</sup> this test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.<sup>8</sup>

5. Turning to the first prong of this test, it is undisputed that these Group B Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.<sup>9</sup> The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.<sup>10</sup> We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Group B Communities to support their assertion that potential customers in the Group B Communities are reasonably aware that they may purchase the service of these MVPD providers.<sup>11</sup> The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming<sup>12</sup> and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.<sup>13</sup> Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Group B Communities because of their national satellite footprint.<sup>14</sup> Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in the Group B Communities.<sup>15</sup> Petitioner sought to

<sup>7</sup>47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>8</sup>47 C.F.R. § 76.905(b)(2)(i).

<sup>9</sup>*See* Petition at 3.

<sup>10</sup>*Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

<sup>11</sup>47 C.F.R. § 76.905(e)(2).

<sup>12</sup>*See* 47 C.F.R. § 76.905(g). *See also* Petition at 4.

<sup>13</sup>*See* Petition at 5.

<sup>14</sup>*See* Petition at 3.

<sup>15</sup>*Id.* at 6. In the Communities of Beecher, Manteno, Monee (CSR 7158-E) and Otto (CSR 7666-E), both the Comcast penetration figure and the aggregate DBS penetration figure clearly exceed 15 percent. Comcast argues that it is subject to effective competition because in addition to DBS penetration exceeding 15 percent of the

determine the competing provider penetration in the Group B Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of subscribers attributable to the DBS providers within the Group B Communities on a zip code and zip code plus four basis where necessary.<sup>16</sup>

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,<sup>17</sup> as reflected in Attachment B, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Group B Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Group B Communities.

8. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Group B Communities.

#### **B. The Low Penetration Test**

9. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area; this test is otherwise referred to as the “low penetration” test.<sup>18</sup> Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the franchise area.

10. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment C, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Group C Communities. Therefore, the low penetration test is also satisfied as to the Group C Communities.

---

(...continued from previous page)

occupied households, the number of Comcast subscribers also exceed 15 percent and the Commission has recognized that in such cases the second prong of the competing provider test is satisfied.

<sup>16</sup>Petition at 7.

<sup>17</sup>Petition at 8.

<sup>18</sup>47 U.S.C. § 543(l)(1)(A).

### III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC **ARE GRANTED**.

12. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>19</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Senior Deputy Chief, Policy Division, Media Bureau

---

<sup>19</sup>47 C.F.R. § 0.283.

## ATTACHMENT A

## CSR(s) 7158-E, 7666-E

## COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(S)
-------------	---------

CSR 7158-E

Alsip	IL0838
Beecher	IL0833
Blue Island	IL0461
Burnham	IL0356
Calumet City	IL0511
Chicago Heights	IL0754
Country Club Hills	IL0457
Crestwood	IL0345
Crete	IL0870
Dixmoor	IL0389
Dolton	IL0545
East Hazel Crest	IL0357
Flossmoor	IL0682
Ford Heights	IL1253
Glenwood	IL1255
Harvey	IL0672
Hazel Crest	IL0683
Hometown	IL0605
Lansing	IL0684
Lynwood	IL1254
Manteno	IL0543
Markham	IL0673
Matteson	IL0685
Merrionette Park	IL0406
Midlothian	IL0346
Monee	IL1361
Oak Forest	IL0578
Olympia Fields	IL0686
Orland Hills	IL0447
Orland Park	IL0411
Palos Heights	IL0454
Palos Hills	IL0339
Park Forest	IL0529
Peotone	IL0542
Phoenix	IL0674
Posen	IL0348
Richton Park	IL0688
Robbins	IL1450
Sauk Village	IL0519
South Chicago Heights	IL0755
South Holland	IL0924
Steger	IL0756
	IL0757
Thornton	IL0689
Tinley Park	IL0349
University Park	IL0687
Worth	IL0351

<b>Communities</b>	<b>CUID(S)</b>
<b><u>CSR 7666-E</u></b>	
<b>Aroma</b>	<b>IL0040</b>
<b>Bourbonnais</b>	<b>IL0042</b>
<b>Kankakee</b>	<b>IL0045</b>
<b>Limestone</b>	<b>IL0047</b>
<b>Otto</b>	<b>IL0048</b>

## ATTACHMENT B

## CSR(s) 7158-E, 7666-E

## COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(S)	CPR*	2000 Census Household	Estimated DBS & Other MVPD Subscribers
<b><u>CSR 7158-E</u></b>				
Alsip	IL0838	19.32%	7,536	1,456
Beecher	IL0833	55.54%	830	461
Blue Island	IL0461	19.14%	8,247	1,579
Burnham	IL0356	21.85%	1,449	317
Calumet City	IL0511	27.33%	15,139	4,138*
Chicago Heights	IL0754	20.88%	10,703	2,235
Country Club Hills	IL0457	29.64%	5,297	1,570
Crestwood	IL0345	18.39%	4,685	862
Crete	IL0870	36.40%	2,704	984
Dixmoor	IL0389	19.31%	1,372	265
Dolton	IL0545	23.40%	8,512	1,991
East Hazel Crest	IL0357	25.42%	590	150
Flossmoor	IL0682	23.35%	3,331	778
Ford Heights	IL1253	21.13%	984	208
Glenwood	IL1255	23.66%	3,373	798
Harvey	IL0672	19.51%	8,990	1,754
Hazel Crest	IL0683	25.08%	5,067	1,271
Hometown	IL0605	18.63%	1,895	353
Lansing	IL0684	22.19%	11,416	2,533
Lynwood	IL1254	21.15%	2,620	554
Manteno	IL0543	51.52%	2,578	1,328
Markham	IL0673	23.69%	3,842	910
Matteson	IL0685	42.64%	4,561	1,945
Merrionette Park	IL0406	19.33%	957	185
Midlothian	IL0346	18.75%	5,158	967
Monroe	IL1361	63.53%	1,204	765
Oak Forest	IL0578	18.73%	9,785	1,833
Olympia Fields	IL0686	27.54%	1,696	467
Orland Hills	IL0447	22.94%	2,153	494

Communities	CUID(S)	CPR*	2000 Census Household	Estimated DBS & Other MVPD Subscribers
Orland Park	IL0411	22.06%	18,675	4,119
Palos Heights	IL0454	18.48%	4,123	762
Palos Hills	IL0339	19.56%	7,320	1,432
Park Forest	IL0529	22.41%	9,138	2,048
Peotone	IL0542	44.71%	1,268	567
Phoenix	IL0674	19.51%	789	154
Posen	IL0348	32.88%	1,627	535
Richton Park	IL0688	27.10%	4,578	1,241
Sauk Village	IL0519	20.50%	3,331	683
South Chicago Heights	IL0755	20.82%	1,570	327
South Holland	IL0924	21.29%	7,663	1,632
Steger	IL0756 IL0757	22.50%	3,862	869
Thorton	IL0689	22.32%	1,008	225
Tinley Park	IL0349	22.96%	17,478	4,013
University Park	IL0687	21.88%	2,253	493
Worth	IL0351	18.71%	4,383	820
<b><u>CSR 7666-E</u></b>				
Aroma	IL0040	32.96%	1,526	503
Bourbonnais	IL0042	30.32%	1,985	602
Kankakee	IL0045	23.36%	518	121
Limestone	IL0047	27.57%	1,650	455
Otto	IL0048	35.09%	701	246

\*CPR = Percent of competitive DBS penetration rate.

\*Calumet City- includes 2,088 DBS subscribers and 2,050 WOW subscribers.



## ATTACHMENT C

## CSR 7158-E

## COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(S)	Franchise Area Households	Cable Subscribers	Penetration Percentage
<u>CSR 7158-E</u> Robbins	IL1450	1,985	445	22.42%